

report will be available both in hard copy and through the Internet. In the past, annual reports were required based on a calendar year and were provided to Congress on or before March 1 of the following year. However, the new law has changed the annual reporting requirements now to be related to the Department's fiscal year. Thus, the Annual Report to Congress on FOIA Activities for 1997 only encompassed the first nine months (January through September), and was reported by March 1, 1998. The FY 98 report will begin in October 1997 and conclude at the end of September 1998. This report will be presented to the Department of Justice instead of Congress, by February 1, 1999, and Justice will report all Federal agency FOIA activity through electronic means.

(j) *Reference materials and guides.* The Department has available in hard copy, and will have electronically via the Internet, a guide for requesting records under the FOIA and an index and description of all major information systems of the Department. The guide is a simple explanation of what the FOIA is intended to do, and how you can use it to access Broadcasting Board of Governors records. The Index explains the types of records that may be requested from the Department through FOIA requests and why some records cannot, by law, be made available by Broadcasting Board of Governors.

[63 FR 71587, Dec. 29, 1998]

## PART 505—PRIVACY ACT POLICIES AND PROCEDURES

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AUTHORITY: Pub. L. 93-579, 88 Stat. 1897; 5 U.S.C. 552a; 55 FR 31940, Aug. 6, 1990, as amended.

SOURCE: 62 FR 10630, Mar. 7, 1997, unless otherwise noted.

### § 505.1 Purpose and scope.

The Broadcasting Board of Governors will protect individuals' privacy from misuse of their records, and grant individuals access to records concerning them which are maintained by the Board's domestic and overseas offices, consistent with the provisions of Public Law 93-579, 88 Stat. 1897; 5 U.S.C. 552a, the Privacy Act of 1974, as amended. The Board has also established procedures to permit individuals to amend incorrect records, to limit the disclosure of personal information to third parties, and to limit the number of sources of personal information. The Board has also established internal rules restricting requirements of individuals to provide social security account numbers.

### § 505.2 Definitions.

(a) *Access Appeal Committee (AAC)*—the body established by and responsible to the Director of Broadcasting Board of Governors for reviewing appeals made by individuals to amend records held by the Board.

(b) *Board*—Broadcasting Board of Governors, its offices, divisions, branches and its Foreign Service establishments.

(c) *Amend*—To make a correction to or expunge any portion of a record about an individual which that individual believes is not accurate, relevant, timely or complete.

(d) *Individual*—A citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain*—Collect, use, store, disseminate or any combination of these record-keeping functions; exercise of control over and hence responsibility and accountability for systems of records.

(f) *Record*—Any information maintained by the Board about an individual that can be reproduced, including finger or voice prints and photographs, and which is retrieved by that

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particular individual's name or personal identifier, such as a social security number.

(g) *Routine use*—With respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected. The common and ordinary purposes for which records are used and all of the proper and necessary uses, even if any such uses occur infrequently.

(h) *Statistical record*—A record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided in 13 U.S.C. 8.

(i) *System of records*—A group of records under the maintenance and control of the Board from which information is retrieved by the name or personal identifier of the individual.

(j) *Personnel record*—Any information about an individual that is maintained in a system of records by the Board that is needed for personnel management or processes such as staffing, employee development, retirement, grievances and appeals.

(k) *Post*—Any of the foreign service branches of the Board.

### § 505.3 Procedures for requests.

(a) The Board will consider all written requests received from an individual for records pertaining to herself/himself as a request made under the Privacy Act of 1974, as amended (5 U.S.C. 552a) whether or not the individual specifically cites the Privacy Act when making the request.

(b) All requests under the Privacy Act should be directed to the Broadcasting Board of Governors, Office of the General Counsel, FOIA/Privacy Act Unit (GC/FOI), 301 4th Street, SW, Washington, DC 20547, which will coordinate the search of all systems of records specified in the request. Requests should state name, date of birth, and social security number.

(c) Requests directed to the Board's overseas posts which involve routine unclassified, administrative and personnel records available only at those posts may be released to the individual by the post if the post determines that

such release is authorized by the Privacy Act. All other requests shall be submitted by the post to the Office of the General Counsel, FOIA/Privacy Act Unit (GC/FOI), 301 4th Street, SW, Washington, DC 20547, and the individual shall be so notified of this section in writing, when possible.

(d) In those instances where an individual requests records pertaining to herself/himself, as well as records pertaining to another individual, group, or some other category of the Board's records, only that portion of the request which pertains to records concerning the individual will be treated as a Privacy Act request. The remaining portions of such a request will be processed as a Freedom of Information Act request by the office noted in paragraph (b) of this section.

### § 505.4 Requirements and identification for making requests.

(a) Individuals seeking access to Board records may present their written request or may mail their request to the Broadcasting Board of Governors, Office of General Counsel, FOI/Privacy Act (GC/FOI) Unit, 301 4th Street, SW, Washington, DC 20547. The GC/FOI Unit may be visited between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for legal holidays.

(b) Individuals, seeking access to Board records, will be requested to present some form of identification. Individuals should state their full name, date of birth and a social security number. An individual must also include her/his present mailing address and zip code, and if possible a telephone number.

(c) When signing a statement confirming one's identity, individuals should understand that knowingly and willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to \$5,000.

### § 505.5 Disclosure of information.

(a) In order to locate the system of records that an individual believes may contain information about herself/himself, an individual should first obtain a copy of the Board's Notice of Systems of Records. By identifying a particular

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record system and by furnishing all the identifying information requested by that record system, it will enable the Board to more easily locate those records which pertain to the individual. At a minimum, any request should include the information specified in § 505.4(b) above.

(b) In certain circumstances, it may be necessary for the Board to request additional information from the individual to ensure that the retrieved record does, in fact, pertain to the individual.

(c) All requests for information on whether or not the Board's system(s) of records contain information about the individual will be acknowledged within ten working days of receipt of the request. The requested records will be provided as soon as possible thereafter.

(d) If the Board determines that the substance of the requested record is exceptionally sensitive, the Board will require the individual to furnish a signed, notarized statement that she/he is in fact the person named in the file before granting access to the records.

(e) Original records will not be released from the custody of the records system manager. Copies will be furnished subject to and in accordance with fees established in § 505.11.

(f) Denial of access to records:

(1) The requirements of this section do not entitle an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(2) Under the Privacy Act, the Board is not required to permit access to records if the information is not retrievable by the individual's name or other personal identifier; those requests will be processed as Freedom of Information Act requests.

(3) The Board may deny an individual access to a record, or portion thereof, if following a review it is determined that the record or portion falls within a system of records that is exempt from disclosure pursuant to 5 U.S.C. 552a(j) and 552a(k). See §§ 505.13 and 505.14 for a listing of general and specific exemptions.

(4) The decision to deny access to a record or a portion of the record is made by the Board's Privacy Act Officer, Office of the General Counsel. The

denial letter will advise the individual of her/his rights to appeal the denial (See § 505.9 on Access Appeal Committee's review).

### § 505.6 Medical records.

If, in the judgment of the Board, the release of medical information directly to the requester could have an adverse effect on the requester, the Board will arrange an acceptable alternative to granting access of such records to the requester. This normally involves the release of the information to a doctor named by the requester. However, this special procedure provision does not in any way limit the absolute right of the individual to receive a complete copy of her or his medical record.

### § 505.7 Correction or amendment of record.

(a) An individual has the right to request that the Board amend a record pertaining to her/him which the individual believes is not accurate, relevant, timely, or complete. At the time the Board grants access to a record, it will furnish guidelines for requesting amendments to the record.

(b) Requests for amendments to records must be in writing and mailed or delivered to the Broadcasting Board of Governors Privacy Act Officer, Office of the General Counsel, 301 4th Street, SW, Washington, DC 20547, who will coordinate the review of the request to amend a record with the appropriate office(s). Such requests must contain, at a minimum, identifying information needed to locate the record, a brief description of the item or items of information to be amended, and the reason for the requested change. The requester should submit as much documentation, arguments or other data as seems warranted to support the request for amendment.

(c) The Board will review all requests for amendments to records within 10 working days of receipt of the request and either make the changes or inform the requester of its refusal to do so and the reasons therefore.

### § 505.8 Board review of requests for changes.

(a) In reviewing a record in response to a request to amend or correct a file,

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the Board shall incorporate the criteria of accuracy, relevance, timeliness, and completeness of the record in the review.

(b) If the Board agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing;

(2) Correct the record accordingly;

(3) And, to the extent that an accounting of disclosure was maintained, advise all previous recipients of the record of the corrections.

(c) If the Board disagrees with all or any portion of an individual's request to amend a record, it shall:

(1) Advise the individual of the reasons for the determination;

(2) Inform the individual of her/his right to further review (see § 505.9).

### § 505.9 Review of adverse Board determination.

(a) When the Board determines to deny a request to amend a record, or portion of the record, the individual may request further review by the Board's Access Appeal Committee. The written request for review should be mailed to the Chairperson, Access Appeal Committee, Broadcasting Board of Governors, Office of Public Liaison, 301 4th Street, SW, Washington, DC 20547. The letter should include any documentation, information or statement which substantiates the request for review.

(b) The Board's Access Appeal Committee will review the Board's initial denial to amend the record and the individual's documentation supporting amendment, within 30 working days. If additional time is required, the individual will be notified in writing of the reasons for the delay and the approximate date when the review is expected to be completed. Upon completion of the review, the Chairperson will notify the individual of the results.

(c) If the Committee upholds the Board's denial to amend the record, the Chairperson will advise the individual of:

(1) The reasons for the Board's refusal to amend the record;

(2) Her/his right and the procedure to add to the file a concise statement supporting the individual's disagreement with the decision of the Board;

(3) Her/his right to seek judicial review of the Board's refusal to amend the file.

(d) When an individual files a statement disagreeing with the Board's refusal to amend a record, the Board will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to, use of, or reason to disclose the file. If information is disclosed regarding the area of dispute, the Board will provide a copy of the individual's statement in the disclosure. Any statement which may be included by the Board regarding the dispute will be limited to the reasons given to the individual for not amending the record. Copies of the Board's statement shall be treated as part of the individual's record, but will not be subject to amendment by the individual under these regulations.

### § 505.10 Disclosure to third parties.

The Board will not disclose any information about an individual to any person or another agency without the prior consent of the individual about whom the information is maintained, except as provided for in the following paragraphs.

(a) *Medical records.* May be disclosed to a doctor or other medical practitioner, named by the individual, as prescribed in § 505.6 above.

(b) *Accompanying individual.* When a requester is accompanied by any other person, the Board will require that the requester sign a statement granting consent to the disclosure of the contents of the record to that person.

(c) *Designees.* If a person requests another person's file, she or he must present a signed statement from that person of record which authorizes and consents to the release of the file to the designated individual.

(d) *Guardians.* Parent(s) or legal guardian(s) of dependent minors or of an individual who has been declared by a court to be incompetent due to physical, mental or age incapacity, may act for and on behalf of the individual on whom the Board maintains records.

(e) *Other disclosures.* A record may be disclosed without a request by or written consent of the individual to whom the record pertains if such disclosure

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conditions are authorized under the provisions of 5 U.S.C. 552a(b). These conditions are:

(1) *Disclosure within the Board.* This condition is based upon a “need-to-know” concept which recognizes that Board personnel may require access to discharge their duties.

(2) *Disclosure to the public.* No consent by an individual is necessary if the record is required to be released under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The record may be exempt, however, under one of the nine exemptions of the FOIA.

(3) *Disclosure for a routine use.* No consent by an individual is necessary if the condition is necessary for a “routine use” as defined in § 505.2(g). Information may also be released to other government agencies which have statutory or other lawful authority to maintain such information. (See Appendix I—Prefatory Statement of General Routine Uses).

(4) *Disclosure to the Bureau of the Census.* For purposes of planning or carrying out a census or survey or related activity. Title 13 U.S.C. Section 8 limits the uses which may be made of these records and also makes them immune from compulsory disclosure.

(5) *Disclosure for statistical research and reporting.* The Board will provide the statistical information requested only after all names and personal identifiers have been deleted from the records.

(6) *Disclosure to the National Archives.* For the preservation of records of historical value, pursuant to 44 U.S.C. 2103.

(7) *Disclosure for law enforcement purposes.* Upon receipt of a written request by another Federal agency or a state or local government describing the law enforcement purpose for which a record is required, and specifying the particular record. Blanket requests for all records pertaining to an individual are not permitted under the Privacy Act.

(8) *Disclosure under emergency circumstances.* For the safety or health of an individual (e.g., medical records on a patient undergoing emergency treatment).

(9) *Disclosure to the Congress.* For matters within the jurisdiction of any House or Senate committee or sub-

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committee, and/or joint committee or subcommittee, pursuant to a written request from the Chairman of the committee or subcommittee.

(10) *Disclosure to the General Accounting Office (GAO).* For matters within the jurisdiction of the duties of the GAO’s Comptroller General.

(11) *Disclosure pursuant to court order.* Pursuant to the order of a court of competent jurisdiction. This does not include a subpoena for records requested by counsel and issued by a clerk of court.

### § 505.11 Fees.

(a) The first copy of any Board record about an individual will be provided free of charge. A fee of \$0.15 per page will be charged for any additional copies requested by the individual.

(b) Checks or money orders should be made payable to the United States Treasurer and mailed to the Freedom of Information Act/Privacy Act Unit, Office of the General Counsel, 301 4th Street, SW, Washington, DC 20547. The Board will not accept cash.

### § 505.12 Civil remedies and criminal penalties.

(a) *Grounds for court action.* An individual will have a remedy in the Federal District Courts under the following circumstances:

(1) *Denial of access.* Individuals may challenge an Board decision to deny them access to records to which they consider themselves entitled.

(2) *Refusal to amend a record.* Under conditions prescribed in 5 U.S.C. 552a(g), an individual may seek judicial review of the Board’s refusal to amend a record.

(3) *Failure to maintain a record accurately.* An individual may bring suit against the Board for any alleged intentional and willful failure to maintain a record accurately, if it can be shown that the individual was subjected to an adverse action resulting in the denial of a right, benefit, entitlement or employment the individual could reasonably have expected to be granted if the record had not been deficient.

(4) *Other failures to comply with the Act.* An individual may bring an action for any alleged failure by the Board to

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comply with the requirements of the Act or failure to comply with any rule published by the Board to implement the Act provided it can be shown that:

(i) The action was intentional or willful;

(ii) The Board's action adversely affected the individual; and

(iii) The adverse action was caused by the Board's actions.

(b) *Jurisdiction and time limits.* (1) Action may be brought in the district court for the jurisdiction in which the individual resides or has a place of residence or business, or in which the Board records are situated, or in the District of Columbia.

(2) The statute of limitations is two years from the date upon which the cause of action arises, except for cases in which the Board has materially and willfully misrepresented any information requested to be disclosed and when such misrepresentation is material to the liability of Board. In such cases the statute of limitations is two years from the date of discovery by the individual of the misrepresentation.

(3) A suit may not be brought on the basis of injury which may have occurred as a result of the Board's disclosure of a record prior to September 27, 1975.

(c) *Criminal penalties*—(1) *Unauthorized disclosure.* It is a criminal violation of the provisions of the Act for any officer or employee of the Board knowingly and willfully to disclose a record in any manner to any person or agency not entitled to receive it, for failure to meet the conditions of disclosure enumerated in 5 U.S.C. 552a(b), or without the written consent or at the request of the individual to whom the record pertains. Any officer or employee of the Board found guilty of such misconduct shall be fined not more than \$5,000.

(2) *Failure to publish a public notice.* It is a criminal violation of the Act to willfully maintain a system of records and not to publish the prescribed public notice. Any officer or employee of the Board found guilty of such misconduct shall be fined not more than \$5,000.

(3) *Obtaining records under false pretenses.* The Act makes it a criminal offense to knowingly and willfully request or gain access to a record about

an individual under false pretenses. Any person found guilty of such an offense may be fined not more than \$5,000.

### § 505.13 General exemptions (Subsection (j)).

(a) General exemptions are available for systems of records which are maintained by the Central Intelligence Agency (Subsection (j)(1)), or maintained by an agency which performs as its principal function any activity pertaining to the enforcement of the criminal laws (Subsection (j)(2)).

(b) The Act does not permit general exemption of records compiled primarily for a noncriminal purpose, even though there are some quasi-criminal aspects to the investigation and even though the records are in a system of records to which the general exemption applies.

### § 505.14 Specific exemptions (Subsection (k)).

The specific exemptions focus more on the nature of the records in the systems of records than on the Board. The following categories of records may be exempt from disclosure:

(a) *Subsection (k)(1).* Records which are specifically authorized under criteria established under an Executive Order to be kept secret in the interest of national defense or foreign policy, and which are in fact properly classified pursuant to such Executive Order;

(b) *Subsection (k)(2).* Investigatory records compiled for law enforcement purposes (other than material within the scope of subsection (j)(2) as discussed in § 505.13(a)). If any individual is denied any right, privilege, or benefit for which she/he would otherwise be eligible, as a result of the maintenance of such material, the material shall be provided to the individual, unless disclosure of the material would reveal the identity of a source who has been pledged confidentiality;

(c) *Subsection (k)(3).* Records maintained in connection with protection of the President and other VIPs accorded special protection by statute;

(d) *Subsection (k)(4).* Records required by statute to be maintained and used solely as statistical records;

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(e) *Subsection (k)(5)*. Records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only if disclosure of the material would reveal the identity of a confidential source that furnished information to the Government;

(f) *Subsection (k)(6)*. Testing or examination records used solely to determine individual qualifications for appointment or promotion in the Federal service when the disclosure of such would compromise the objectivity or fairness of the testing or examination process;

(g) *Subsection (k)(7)*. Evaluation records used to determine potential for promotion in the armed services, but only if disclosure would reveal the identity of a confidential source.

### § 505.15 Exempt systems of records used.

The Broadcasting Board of Governors is authorized to use exemptions (k)(1), (k)(2), (k)(4), (k)(5), and (k)(6). The following Board components currently maintain exempt systems of records under one or more of these specific exemptions: Executive Secretariat; Education and Cultural Exchange Program; Legal Files; Privacy Act and Freedom of Information Act Files; Employee Grievance Files; Recruitment Records; Employee Master Personnel Records; Foreign Service Selection Board Files; Employee Training Files; Personnel Security and Integrity Records; International Broadcasting Bureau Director's Executive Secretariat Files; and International Broadcasting Bureau Employee Personnel Files.

## PART 506—PART-TIME CAREER EMPLOYMENT PROGRAM

Sec.

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AUTHORITY: 5 U.S.C. 3401 (note and 3402).

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### § 506.1 Purpose of program.

Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who require a reduced workweek, providing parents opportunities to balance family responsibilities with the need for additional income, providing employment opportunities for women returning to the workforce and assisting students who must finance their own education or vocational training. In view of this, the Broadcasting Board of Governors will operate a part-time career employment program, consistent with the needs of its beneficiaries and its responsibilities.

### § 506.2 Review of positions.

Positions becoming vacant unless excepted as provided by § 506.7, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

(a) Mission requirements and occupational mix.

(b) Workload fluctuations.

(c) Employment ceilings and budgetary considerations.

(d) Size of workforce, turnover rate and employment trends.

(e) Affirmative action.

### § 506.3 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed above may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.